

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isaac Forman	Team: Squad #7	CCRB Case #: 201802628	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/03/2018 5:55 PM	Location of Incident: Outside of 347 6th Avenue	Precinct: 06	18 Mo. SOL 10/3/2019	EO SOL 10/3/2019	
Date/Time CV Reported Wed, 04/04/2018 7:48 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 04/04/2018 7:48 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Eysel	03057	954783	006 PCT
2. POM Michael Collarini	00964	953767	006 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Eysel	Abuse: Police Officer Robert Eysel stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Michael Collarini	Abuse: Police Officer Michael Collarini stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM Robert Eysel	Abuse: Police Officer Robert Eysel searched the vehicle in which § 87(2)(b) was an occupant.	
D.POM Robert Eysel	Abuse: Police Officer Robert Eysel questioned § 87(2)(b)	
E.POM Robert Eysel	Abuse: Police Officer Robert Eysel frisked § 87(2)(b)	
F.POM Michael Collarini	Abuse: Police Officer Michael Collarini frisked § 87(2)(b)	

Case Summary

On April 4, 2018, § 87(2)(b) filed this complaint with the CCRB via the on-line website.

On April 3, 2018, at approximately 5:55pm, § 87(2)(b) was driving in the vicinity of 4th Street and 6th Avenue in Manhattan when he was stopped by PO Robert Eysel and PO Michael Collarini of the 6th Precinct (**Allegations A and B-Abuse of Authority:** § 87(2)(b)). After § 87(2)(b) failed to provide his driver's license, PO Eysel asked § 87(2)(b) to step out of the vehicle. PO Eysel then searched § 87(2)(b) vehicle (**Allegation C-Abuse of Authority:** § 87(2)(g)). While he was searching the vehicle, PO Eysel allegedly asked § 87(2)(b) "Do you have any weapons or anything I should know about?" (**Allegation D-Abuse of Authority:** § 87(2)(g)). PO Eysel and PO Collarini then frisked § 87(2)(b) (**Allegations E and F-Abuse of Authority:** § 87(2)(g)). § 87(2)(b) then informed the officers that he had lost his driver's license and provided his name and date of birth to PO Eysel. PO Eysel conducted a database search on his department phone that confirmed § 87(2)(b) identity and that he had a valid driver's license. § 87(2)(b) was not issued any summonses as a result of this incident.

§ 87(2)(g)

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Robert Eysel stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (B) Abuse of Authority: Police Officer Michael Collarini stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Eysel and PO Collarini stopped § 87(2)(b) in his vehicle. § 87(2)(g)

§ 87(2)(b) testified that he first observed PO Eysel and PO Collarini in their unmarked motor vehicle while parked in the vicinity of 3rd Street and 6th Avenue. § 87(2)(b) pulled out of his parking spot in his blue sedan and onto 3rd Street travelling towards 6th Avenue. § 87(2)(b) testified that there were no mechanical issues with his vehicle and that he has 35% tints on all his windows, other than the front windshield. As § 87(2)(b) pulled out of his spot, the unmarked police vehicle followed. § 87(2)(b) made a right hand turn onto 6th Avenue, changed one lane to the left, then stopped at a red light at 4th Street and 6th Avenue. Immediately after the light turned green, the unmarked police vehicle's lights and sirens sounded and § 87(2)(b) immediately pulled over near the corner of 4th Street and 6th Avenue. § 87(2)(b) testified that he signaled when pulling out of his parking spot, when making the right onto 6th Avenue, and when changing lanes on 6th Avenue. He testified that he did not commit any traffic infractions. PO Eysel approached the driver's side and § 87(2)(b) asked him why they had stopped him. PO Eysel told § 87(2)(b) that he was pulled over because he did not signal while pulling out of his parking spot, his headlights were not on, and because his windows were tinted. § 87(2)(b) testified that his headlights were on while he was driving (BR 01).

PO Eysel testified that he first observed § 87(2)(b) vehicle travelling northbound on 6th Avenue in the vicinity of 4th Street. PO Eysel observed § 87(2)(b) change lanes towards the

left without signaling. PO Eysel was four to five car lengths behind § 87(2)(b) when he observed this. He could not recall if there were any vehicles between them. PO Eysel couldn't recall if he relayed his observation to his partner. PO Eysel testified that they were stopping § 87(2)(b) because he failed to signal his lane change which is a moving violation. There was no additional reason they were stopping § 87(2)(b) (BR 02).

PO Collarini's testimony was largely consistent with that of PO Eysel. He testified that he also observed § 87(2)(b) change lanes without signaling. He further testified that the decision to stop § 87(2)(b) was made by both officers. § 87(2)(b) failing to signal when changing lanes was the sole reason for the stop (BR 03).

Despite the observed moving violation and § 87(2)(b) not having his identification, no summonses were issued. The officers used their discretion not to issue any summonses.

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Allegation (C) Abuse of Authority: Police Officer Robert Eysel searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (D) Abuse of Authority: Police Officer Robert Eysel questioned § 87(2)(b)

§ 87(2)(g)

It is undisputed that PO Eysel leaned his head in and searched § 87(2)(b) vehicle. § 87(2)(g)

§ 87(2)(b) testified that PO Eysel asked for his driver's license multiple times. § 87(2)(b) began to doubt that PO Eysel was a police officer as he was wearing plainclothes and was driving an unmarked vehicle. § 87(2)(b) retrieved his cellphone from the cupholder next to the driver's seat and called 911. PO Eysel told § 87(2)(b) to get out of the car, then reached inside the open driver's window and opened the car door from the inside. § 87(2)(b) stepped out of the car and PO Eysel placed him in handcuffs. PO Eysel then stuck approximately half of his head into the opened doorframe of the vehicle and looked around. While inside the vehicle, PO Eysel asked § 87(2)(b) "Do you have any weapons or anything I should know about?" PO Eysel did not touch anything while inside the vehicle. His head was inside the vehicle for approximately two seconds (BR 01).

PO Eysel testified that he approached the driver's side of § 87(2)(b) vehicle and asked § 87(2)(b) for his driver's license. § 87(2)(b) stated that he did not believe that PO Eysel was a police officer. PO Eysel asked § 87(2)(b) for his ID approximately three times and § 87(2)(b)

§ 87(2)(b) did not provide it. § 87(2)(b) did not address PO Eysel's requests and only responded by questioning whether PO Eysel was a police officer. While this was going on, § 87(2)(b) was moving his arms, reaching around the vehicle. PO Eysel couldn't recall specifically where or what he was reaching for. PO Eysel testified that § 87(2)(b) failure to provide his ID, questioning whether they were officers, and him reaching around the vehicle raised PO Eysel's suspicion that § 87(2)(b) might possess a weapon or other contraband. While inside the vehicle, § 87(2)(b) retrieved his cellphone and called 911. PO Eysel asked § 87(2)(b) to step out of the vehicle. PO Eysel couldn't recall whether he or § 87(2)(b) opened the driver's door. He also couldn't recall if he reached inside the vehicle and opened the door from the inside. § 87(2)(b) § 87(2)(b) complied with stepping out of the vehicle. After § 87(2)(b) was out of the vehicle, PO Eysel leaned his head into the still open driver's door. PO Eysel looked around the vehicle for less than one minute. He testified that he was looking to see if there were any weapons or contraband in plain view. PO Eysel reiterated that he suspected that § 87(2)(b) might be in possession of a weapon or other contraband because § 87(2)(b) was not cooperating with providing his ID, he was questioning whether they were police officers, and he was reaching around the vehicle. PO Eysel made no specific observations that led him to believe that weapons or contraband may have been present in the vehicle. PO Eysel did not see anything of note inside the vehicle. PO Eysel could not recall if he asked § 87(2)(b) if he had any weapons (BR 02).

PO Collarini testified that he initially approached the passenger's side of the vehicle. Though he could not hear the conversation between PO Eysel and § 87(2)(b) he believed that it was taking longer than normal to obtain § 87(2)(b) ID. Because of this, he went around to the driver's side of the vehicle. When he arrived on the driver's side, PO Eysel was still asking § 87(2)(b) § 87(2)(b) for his ID. PO Collarini also asked § 87(2)(b) to provide his ID. § 87(2)(b) was replying by questioning whether or not they were actually police officers. Approximately one minute after the beginning of the stop, § 87(2)(b) retrieved his cellphone, PO Collarini, couldn't recall from where, and called 911. PO Collarini described § 87(2)(b) as nervous. He described § 87(2)(b) as such because § 87(2)(b) was looking around and because he called 911. § 87(2)(b) was not doing anything physically inside the vehicle. Both officers instructed § 87(2)(b) to step out of the vehicle and he complied. PO Collarini denied that either he or PO Eysel reached inside the vehicle and opened the driver's door from the inside. PO Collarini denied leaning into and searching § 87(2)(b) vehicle. He couldn't recall if PO Eysel did so. PO Collarini did not observe anything that led him to believe that § 87(2)(b) might be in possession of a weapon or contraband. PO Collarini could not recall if PO Eysel asked § 87(2)(b) § 87(2)(b) if he had any weapons (BR 03).

An officer breaching the plane of the car doorway to reach inside the vehicle, even if to obtain a better visual of the interior of the car, does constitute a search of that vehicle. An officer may search a vehicle only if there is probable cause that it contains contraband, weapons, or evidence of a crime. People v. Hernandez, 238 A.D.2d 131(1997) (BR 04).

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Allegation (E) Abuse of Authority: Police Officer Robert Eysel frisked § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Michael Collarini frisked § 87(2)(b)

It is undisputed that PO Eysel frisked § 87(2)(b). While § 87(2)(b) did not allege that PO Collarini frisked him, PO Eysel testified that PO Collarini did so. § 87(2)(g)

§ 87(2)(b) testified that after PO Eysel finished searching the vehicle, he patted the outside of § 87(2)(b) front and back pants pockets. PO Eysel then patted around § 87(2)(b) waistline. § 87(2)(b) testified that he was wearing black jeans, a white t-shirt, and a black jacket with two front pockets. He testified that he did not have anything in any of his pockets, nor around his waistband. The frisk lasted approximately three to four seconds (BR 01).

PO Eysel testified that after § 87(2)(b) stepped out of the vehicle, both officers placed him into handcuffs. Both he and PO Collarini then frisked § 87(2)(b). PO Eysel patted the right side of § 87(2)(b) upper body and waistline, then his right arm and right leg, down to his ankle. PO Collarini patted the same areas on § 87(2)(b) left side. PO Eysel testified that § 87(2)(b) was frisked for the officers' safety as well as that of any pedestrians in the area. PO Eysel was generally suspicious of § 87(2)(b) for the same reasons stated above. When asked if he believed § 87(2)(b) might be in possession of a weapon, PO Eysel testified that he was not sure but that he believed it was possible. He did not make any specific observations that led him to believe that § 87(2)(b) was in possession of a weapon and could not recall observing any bulges on § 87(2)(b) person (BR 02).

PO Collarini testified that, because the officers placed § 87(2)(b) into handcuffs, he believed that procedurally they would have frisked him. However, he testified that he could not recall if he or PO Eysel frisked § 87(2)(b). PO Collarini did not observe anything that led him to believe that § 87(2)(b) was in possession of a weapon. PO Eysel did not communicate observations that suggested such either (BR 03).

Neither officer filled out a Stop, Question, and Frisk Report, nor did either reference the frisk in their memo book entries regarding this incident. Thus, the frisk and its justification was undocumented.

A frisk is authorized when the member of the service reasonably suspects the person is armed and dangerous. Reasonable suspicion exists when the information known to the member of the service would make an ordinarily prudent and cautious police officer under the circumstances believe

criminal activity is at hand. The officer must have a particularized and objective basis for suspecting the person stopped of the criminal conduct. NYPD Patrol Guide, Procedure 212-11.

§ 87(2)(g)

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 06).
- PO Eysel has been a member-of-service for four years and this is the first CCRB complaint to which he has been a subject.
- PO Collarini has been a member-of-service for five years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
- As of June 19, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (BR 08).

Squad No.: 15

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer:

Signature

Print Title & Name

Date